



Costs Decision

Site visit made on 16 December 2020

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2021

Costs application in relation to Appeal Ref: APP/U5930/20/3252817 Flats 22-25 Howard Mansions, Forest Road, Walthamstow E17 4NA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Yossi Shahar of Lionrule Ltd for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against the refusal of planning permission for Internal alterations and conversion of existing 4no. Residential Units to form 8no. Residential Units.
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Decision

1. The application for an award of costs against the Council of the London Borough of Waltham Forest is partially allowed, as set out in the terms below.

Reasons

2. Paragraph 16-030-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 16-049-20140306 of the PPG states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations, failure to produce evidence to substantiate reasons for refusal, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The Council's first reason for refusal states the development would not provide a sustainable form of development as it is outside a town centre. The policies referred to by the Council do not preclude new housing outside town centres or at the appeal site location. The Council stated this size of dwelling may gain support in a town centre but does not substantiate why a town centre location may be acceptable, or why the appeal site location is unsustainable or unacceptable. Based upon the evidence before me the location can be regarded as a sustainable location. The Council has not substantiated its reasoning in respect of this matter, which constitutes unreasonable behaviour that resulted in unnecessary expense in the appeal process.

5. Although the Council approved a similar proposal in 2019, the Council has explained why it considered this development was not acceptable having regard to Policy DM7 of the Waltham Forest Development Management Policies Local Plan (2013) (the DMPLP). This related to the development not being in accordance with the development plan. I have reached a view having regard to the evidence provided at the appeal stage, which indicates that material considerations indicate a decision should be taken other than in accordance with the development plan. The evidence before me suggests this was not advanced to the Council at the application stage. Therefore, the Council has not behaved unreasonably in reaching this finding on this policy.
6. Based upon the evidence before me the Council did not seek clarification of the floor to ceiling height of the proposed dwellings. Had the Council sought such clarification, this reason for refusal could have been avoided. This is unreasonable behaviour. However, this did not put the applicant to unnecessary expense because they would have needed to produce the evidence in respect of ceiling heights at the application stage.
7. The Council's appeal statement introduces a further reason that the development would be unacceptable in relation outdoor amenity space provision. It is not clear why this was raised at this late stage. It is also not clear how the Council applied the criteria in paragraph 8.7 of the DMPLP which explains the basis upon which it will take a flexible approach to assessing proposals, having regard to the existing site and the proposed development. I have not found harm from the conflict given the existing occupancy, and the Council is not clear why there is overall harm from this development. This is unreasonable behaviour which has resulted in the applicant incurring unnecessary expense in the appeal process.
8. Given the extent and nature of the parking and refuse area, and that this development only relates to eight dwellings, the development could make adequate provision for refuse and recycling storage and collection. It should have been apparent to the Council that refuse and recycling storage could have been adequately dealt with by a planning condition. The Council's third reason for refusal therefore could and should have been avoided. In relation to this matter, unreasonable behaviour resulting in the applicant incurring unnecessary expense in the appeal process is demonstrated.
9. The Council's fourth reason for refusal asserts the development would have an unacceptable impact upon the highway. However, there is no detailed analysis or reasoned consideration of the existing highway conditions, parking generation by the existing appeal site dwellings, demand as a result of this proposal, or the highway effects on the area. There is no substantive evidence of a high level of parking stress which the Council refers to. I have found the appeal site to be in a sustainable location with services, facilities, and sustainable transport options nearby. The evidence does not demonstrate that a section 106 agreement to secure car free parking is necessary or justified.
10. Therefore, the Council has made some generalised assertions about the proposal's impact, which are not supported by objective analysis. This is unreasonable behaviour which caused the appellant unnecessary expense in the appeal process.

Conclusion

11. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Waltham Forest shall pay to Yossi Shahar of Lionrule Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the appeal in respect of the location of the development, outdoor space provision, the storage and collection of refuse and recycling, and the parking and highway effects of the proposed development.
13. The applicant is now invited to submit to the Council of the London Borough of Waltham Forest, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Dan Szymanski

INSPECTOR